89-880

Supreme Court, U.S.
FILED
DEC 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JACK E. FLEMING,

Petitioner,

vs.

JOE A. CANNON,
GARY R. COWAN,
THE LAW FIRM OF HALL & EVANS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Submitted by:

Jack E. Fleming
3624 Citadel Drive North,
Suite 250
Colo. Spgs., Colo. 80909
(719) 598-5286

Petitioner is Pro Se.

QUESTIONS PRESENTED FOR REVIEW

1. Whether any of the Petitioner's six (6) claims for relief as stated in the original complaint alleging violation and/or deprivation of certain federal constitutional rights and so noted by the U. S. Court of Appeals in its order and judgment (Appendix B) states a cause of action pursuant to Title 42 USC sec. 1983.

2. Whether the U. S. Court of Appeals "erred" when it affirmed the order of the District Court to dismiss this action for the lack of subject matter jurisdiction.

3. Whether the Petitioner, pro se, can legally file lawsuits in federal court against state court judges, prominent law firms, and prominent attorneys pursuant to Title 42 USC sec. 1983 for alleged violations and/or deprivation of one's federal constitutional rights under the color of state law.

4. Whether the District Court has jurisdiction pursuant to 28 USC 1331 and 28 USC 1343 to review state court orders issued

and state court procedures used in a state court action to determine if any of the Petitioner's federal rights were violated and/or deprived from him during the state court litigation process in Fleming v. Kent pursuant to Title 42 USC sec. 1983 as so alléged in his complaint.

5. Whether the U. S. Court of Appeals denied the Petitioner procedural due process of law by not allowing the Petitioner the use of 10th Circuit Rule 33.2 Settlement Conferences before briefs were submitted to the court for determination as so stated in that rule.

6. Whether the U. S. Court of Appeals can legally grant an award of damages and double costs pursuant to FRAP Rule 38 and 28 USC sec. 1912 for the taking of a frivolous appeal without stating any findings of fact and conclusions of law to support their award when the appeal was legally taken pursuant to FRAP Rule 3(a) and Rule 4(a)(1).

7. Whether the U. S. Court of Appeals discriminated against the Petitioner by allowing Judge Anderson to participate in and write

this opinion and order when he had already participated in four (4) previous appeals regarding the Petitioner's federal action pursuant to Title 42 USC sec. 1983.

8. Whether the Petitioner, as a citizen of the United States all of his life, is actually covered by the U. S. Constitution and its amendments and is entitled to sue other parties and defend himself as a pro se litigant in any or all of the courts within the United States and its territories.

PARTIES TO PROCEEDINGS BELOW

The only parties to this proceeding in the courts below and known to the Petitioner are those indicated by the caption of this case.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

JACK E. FLEMING,

Petitioner,

vs.

JOE A. CANNON,
GARY R. COWAN,
THE LAW FIRM OF HALL & EVANS.

Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

The Petitioner, Jack E. Fleming, respectfully prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Tenth Circuit.

OPINIONS OF COURTS BELOW

Opinions of lower courts cited below:

Jack E. Fleming v. Joe A. Cannon, et. al., Case No. 86-M-2011, (Appendix A)

Jack E. Fleming v. Joe A. Cannon, et. al., Case No. 88-2931 (Appendix B)

Jack E. Fleming v. Joe A. Cannon, et. al., Case No. 88-2931 (Appendix C)

JURISDICTION

1. The jurisdiction of the U. S. District Court was invoked pursuant to 28 USC 1331 and 28 USC 1343. The order dismissing the Petitioner's action is dated November 14, 1988.

2. The date of the opinion and order of the United States Court of Appeals for the Tenth Circuit stating that the federal courts do not have jurisdiction to review state court judgments is dated July 3, 1989. The order denying Petitioner's request for a rehearing and suggestion for rehearing en banc was entered by the Court of Appeals on September 7, 1989.

3. The jurisdiction of this Court is invoked pursuant to 28 USC 1254.

STATEMENT OF THE CASE

On September 29, 1986, the Petitioner filed this action in the U. S. District Court for the District of Colorado pursuant to Title 42 USC sec. 1983, and the District Court had jurisdiction in this case pursuant to 28 USC 1331 and 28 USC 1343. The Petitioner alleged that his federal rights had been deliberately violated during the litigation process in the Colorado state court action known as Fleming v. Kent. As alleged in the Petitioner's complaint, he had been denied due process of law, equal protection under the law, and access to the courts when he was denied by Respondent Cannon the use of certain rules of civil procedure and his case was later dismissed for the failure to state a claim for relief. Namely, Judge Cannon refused to let the Petitioner use the discovery process in general when preparing to answer the Respondents motion to dismiss. The Petitioner supplied the District Court all of the doc-

umentation (exhibits) needed to show and prove that he had indeed been denied and deprived of his federal constitutional rights as alleged in his complaint. The only court in the United States to have jurisdiction over the deprivation of one's federal rights pursuant to Title 42 USC sec. 1983 is the U. S. District Court. The state trial courts and the state appellate courts do not have jurisdiction over federal constitutional rights pursuant to 42 USC 1983, and both the U. S. District Court and the U. S. Court of Appeals knew that at the time of their respective decisions.

The Petitioner alleged that Respondent Cannon violated the Petitioner's federal rights when he issued an order precluding the other Respondents from answering interrogatories served on them by the Petitioner Pursuant to CRCP Rule 33 in Fleming v. Kent. The Petitioner's state court action was dismissed for the failure to state a claim for relief, when indeed, the Petitioner

had stated several valid claims for relief in his complaint.

The District Court order (Appendix A) is in complete error. The 10th Circuit decision in Anderson v. Colorado 793 F2d 262 (1986) does not apply in this case, and the District Court knew or should have known that at the time of its ruling. Besides, this Court never ruled on the constitutionality or the content of Anderson v. Colorado, supra, because the appellant never asked this Court to review that decision. The Petitioner is questioning the quality, extensiveness, and/or fairness of procedures used and followed by the state court and the other Respondents in Fleming v. Kent, so the circumstances are just not the same as in Anderson v. Colorado. The District Court, the U. S. Court of Appeals and this Court have the duty and the jurisdcition to examine the quality, extensiveness and/or fairness of procedures used and followed in the prior litigation in state court, and the redeter-

mination of the issues is warranted if such doubt exists. The Petitioner alleged in his complaint and responses to the Respondents' motion to dismiss his doubt as to the quality, extensiveness, and/or fairness of procedures followed and used in Fleming v. Kent, but both the District Court and the Court of Appeals absolutely refused to redetermine the issues as mandated by the Court of Appeals in its own opinion in Morgan v. City of Rawlins 792 F2d 975 (10th Cir. 1986), and this Court's decision in State of Montana v. United States 440 US 147, 59 L Ed 2d 210, 99 S. Ct. 970 (1979). The Court of Appeals used this Court's decision in Montana v. U. S., supra, as the legal authority for its decision in Morgan v. Rawlins, supra. This Court must now exercise its jurisdiction in this matter and apply Montana v. U. S. to redetermine the issues in Fleming v. Kent to see if any of the Petitioner's federal rights were violated.

In England v. Louisiana State Board 375 US 411, 11 L Ed 2d 440, 84 S. Ct. 461 (1964), this Court ruled as follows:

> When a federal court is properly appealed to in a case over which it has jurisdiction, it is its duty to take such jurisdiction.
>
> The right of a party plaintiff to choose a federal court where there is a choice cannot be properly denied.
>
> In cases where, but for the application of the abstention doctrine, the primary fact determination would have been made by the Federal District Court, a litigant may not be unwillingly deprived of that determination; the possibility of appellate review by the Supreme Court of a state court determination may not be substituted against a party's wishes, for his right to litigate his federal claim in the federal courts.

The Petitioner had a perfect right to come to the District Court and file suit for the deprivation of his federal rights whether or not he had filed any appeals with the state appellate courts. That is the only reason that Congress enacted 42 USC 1983.

In State of Montana v. United States, supra, this Court ruled as follows regarding

the abstention doctrine and the policy of redetermining the issues:

> The abstention doctrine may not be used as a vehicle for depriving individuals of an otherwise cognizable right to have federal courts make factual determinations essential to the resolution of federal questions.
>
> The redetermination of issues is warranted is there is reason to doubt quality, extensiveness, or fairness of procedures followed in prior litigation.

The District Court and the Court of Appeals were under direct orders from this Court to not apply the abstention doctrine when a federal question was at hand, and that these same courts were to redetermine the issues when there was doubt regarding fairness of procedures used in the prior litigation. The Petitioner feels that he has not yet been afforded the benefits of this Court's rulings regarding those subjects.

In Garcia v. Wilson 731 F2d 640 (10th Cir. 1984), the Court of Appeals ruled regarding claims brought to the federal court pursuant to 42 USC 1983. The Petitioner

feels that he proved to both the District Court and the Court of Appeals that his federal constitutional rights had been denied him under the color of state law. All of those facts were stated and clearly established with exhibits in the Petitioner's complaint as filed in the District Court. In Monroe v Pape 365 US 167, 5 L Ed 2d 492, 81 S. Ct. 473 (1961), this Court ruled regarding the federal statute known as 42 USC 1983. In that decision, this Court made it very clear what the intent and use of the statute 42 USC 1983 was to be involving the alleged deprivation of one's federal constitutional rights. The Petitioner feels that his claims for relief stated several causes of action pursuant to 42 USC 1983 and did so beyond any doubt.

In Verner v. State of Colorado 533 F. Supp. 1109 (D. Colo. 1982), affirmed 10th Cir. (1983), 716 F2d 1352, cert. denied 466 US 960, the court stated that state officials may be sued in their personal

capacity for damages in a federal action because the Eleventh Amendment grants them no immunity even when they are acting in their official capacity. In Pulliam v. Allen 466 US 522, 80 L Ed 2d 565, 104 S. Ct. 1970 (1984), this Court ruled that Congress intended 42 USC 1983 to be an independent protection for federal rights and nothing suggested that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from collateral review.

The federal constitutional rights of the Petitioner as secured by the U. S. Constitution, namely, Amendments 1, 5, 14 were deliberately violated by all Respondents as alleged. The Petitioner proved his case by submitting to the District Court all of the documents necessary to prove his points of law and establish beyond any doubt that his federal rights had indeed been violated as alleged.

The Petitioner also feels that he was

severely discriminated against when he was denied by the U. S. Court of Appeals the priviledges as stated in Rules of Court for the 10th Circuit, namely, Rule 33.2 Settlement Conferences. The rule reads as follows:

> Settlement conferences shall be conducted in all civil proceedings which do not seek relief from criminal convictions. Within 10 days after notice that the matter has been set for oral argument, or after notice that the court intends to submit the matter on the briefs, counsel for the appellant/petitioner shall initiate a conference with counsel for the appellee/respondent regarding prospective settlement of the issues of the appeal.

The Petitioner was never given the opportunity to try and settle the issues on appeal with the Respondents. The U. S. Court of Appeals issued its ruling on July 3, 1989 before any notice to attempt to settle was ever given to the Petitioner. Secondly, the opinion in this case, 88-1911, 88-1913, 88-1918 and 88-1922 were all treated the same by the Court. These opinions were all written by the same circuit judge and

read almost word for word throughout the whole opinion. The Petitioner feels that he has been severely discriminated against because he feels that he was entitled to have the opinions in his cases written by someone other than the same judge in all five (5) of his appeals. The Petitioner feels that the Court of Appeals committed severe judicial discrimination against the Petitioner because the Court should have given at least three (3) cases to other judges not involved in any of the prior opinions.

The Petitioner's appeal in this case was filed in good faith and as a matter of law pursuant to FRAP Rule 3(a) and Rule 4(a)(1). The Petitioner filed this appeal and proceeded with this appeal because he felt that the District Court had "erred" when it dismissed the Petitioner's sec. 1983 action for the reasons stated in the District Court's order. The Petitioner felt that his appeal was the only and correct way to correct errors made by the District

Court. The Petitioner does not believe that his appeal in this case is legally frivolous. This Court must not allow the precedence to be set that pro se litigants cannot appeal their cases to the 10th Circuit without the fear of being assessed damages and double costs because they exercised their constitutional right of appeal, which is a form of the right of access to the courts.

REASONS FOR GRANTING THE PETITION

1. All of the Petitioner's claims for relief stated causes of action in this case pursuant to Title 42 USC 1983. Petitioner was denied access to the courts by both the District Court and the U. S. Court of Appeals.

2. It has been established by this Court that Title 42 USC 1983 can be used to legally file suit against state court judges and other prominent judicial people including attorneys who are alleged to have violated one's federal constitutional rights.

3. The U. S. Court of Appeals "erred" when it affirmed the order of the District Court. The U. S. District Court did have the proper jurisdiction to hear Petitioner's claims for relief pursuant to 28 USC 1331 and 28 USC 1343.

4. This Court must allow certiorari in this case because the Petitioner's rights were violated by the Respondents in this action along with the District Court and the U. S. Court of Appeals.

5. The U. S. Court of Appeals denied the Petitioner his procedural due process rights by not allowing the Petitioner the use of 10th Circuit Court Rule 33.2, namely, Settlement Conferences before briefs were submitted to the court for determination.

6. The appeal to the U. S. Court of Appeals was not legally frivolous. The Petitioner's appeal was filed in good faith and as a matter of law pursuant to FRAP Rule 3(a) and Rule 4(a)(1). The U. S. Court of Appeals failed to state findings of fact and

conclusions of law to support its ruling that the appeal was legally frivolous. The Respondents in this case are not entitled to damages and double costs as so awarded by the U. S. Court of Appeals.

7. To deny this petition for certiorari would mean that the Petitioner is not covered by the U. S. Constitution. The District Court, the U. S. Court of Appeals and the Respondents have all deprived the Petitioner of certain of his federal constitutional rights during the litigation process. This Court must restore those rights. It cannot be allowed to be established that the federal courts can permanently deprive one of his federal constitutional rights. This will set a precedence that only a few within the United States would really want to be set. A person must be allowed to go to court pro se, and during the litigation process that follows, that person cannot be deprived of one or more of their federal consti-

tutional rights by the federal courts or any other court within the United States and its territories. That must be an absolute mandate proclaimed by this Court in this case. This mandate must become the law of the land.

8. The U. S. Court of Appeals committed judicial discrimination against the Petitioner by allowing Judge Anderson to be involved in this opinion when he had already been involved in four (4) previous opinions issued by that court regarding actions pursuant to 42 USC 1983. Since that Court did practice discrimination against the Petitioner, the opinions and orders as issued by the 10th Circuit in this case cannot be allowed to stand.

CONCLUSION

The only real question in this petition for this Court to determine is whether the Petitioner is covered by all of the individual rights, liberties and priviledges as stated in the U. S. Constitution and

its amendments, namely, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. The Petitioner was born a citizen of the United States of America and has lived in this country all of his life. It appears to the Petitioner that so far all of the lower courts, both state and federal, believe that the Petitioner is not covered by the U. S. Constitution, and therefore, is not a citizen of this country. If the Petitioner is a citizen of the United States of America and is indeed covered by all of the rights, priviledges and liberties as so stated in the U. S. Constitution, then this Court must grant certiorari in this case. A denial of this petition would affirm the District Court order, affirm the order and judgment of the U. S. Court of Appeals, and affirm all state court orders and procedures that violated the Petitioner's federal constitutional rights, and establish once and for all, that the Petitioner is just not covered by the U. S. Constitution,

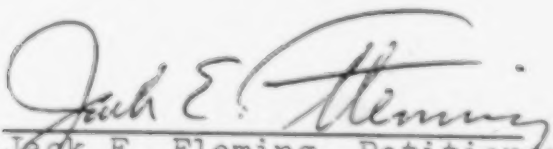
and therefore, no longer a citizen of the United States.

This Court must now come into this case and accept jurisdiction as should have been done by the District Court and the U. S. Court of Appeals as so stated by this Court in England v. Louisiana State Board, supra. This Court must then wipe away the stigma of the abstention doctrine left by the District Court and the Court of Appeals and redetermine all of the issues in this case as mandated by its own opinion in State of Montana v. United States, supra. This Court must do this because all other lower courts have refused to do so. This Court must now determine if the Petitioner's federal constitutional rights were violated, and if so, must reinstate these rights and remand this case back to the District Court for a trial for damages pursuant to Title 42 USC sec. 1983.

The Petitioner respectfully requests

that this Court grant certiorari in this case and that this Court decide once and for all whether the Petitioner is currently a citizen of the United States and is truly covered by the U. S. Constitution and all of its amendments as a pro se litigant in all of the courts within the United States and its territories.

Respectfully submitted,



Jack E. Fleming, Petitioner
3624 Citadel Drive North,
Suite 250
Colorado Springs, CO. 80909

Petitioner is Pro Se.

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Petitioner's petition for Writ of Certiorari, postage prepaid, this 22nd day of November, 1989 to:

Gregg E. Kay, Esquire
First Assistant Attorney General
1525 Sherman Street, 3rd Floor
Denver, Colorado 80203

Malcolm S. Mead, Esquire
HALL & EVANS
1200 - 17th Street, Suite 1700
Denver, Colorado 80202

Jack E. Attorney

APPENDIX

APPENDIX A

APP 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 86-M-2011

JACK E. FLEMING,

Plaintiff,

v.

JOE A. CANNON, District Judge in the El Paso County District court of the 4th Judicial District of Colorado, individually, THE LAW FIRM OF HALL & EVANS, a Colorado partnership, THE PROFESSIONAL LIABILITY INSURANCE CARRIER FOR THE LAW FIRM OF SUSEMIHL, LOHMAN, KENT, CARLSON & McDERMOTT,

Defendants.

ORDER OF DISMISSAL

In the complaint, filed September 29, 1986, Jack E. Fleming seeks relief from an order entered by Judge Cannon in the District Court, El Paso County, Colorado, dismissing Mr. Fleming's complaint against Stanley C. Kent for fraud and malpractice. The dismissal was based

on the pleadings and without requiring the defendant and his law firm to answer interrogatories submitted by Jack Fleming. In this action Mr. Fleming seeks relief under 42 U.S.C. 1983 for deprivation of due process in the procedure followed by Judge Cannon and also asserts that he acted in concert and in a conspiracy with Gary R. Cowan and the law firm of Hall & Evans who appeared as counsel for Mr. Kent in the state action. Six claims for relief are stated and the prayer for relief asks for the recovery of all monies expended in the state action, costs of this action, exemplary damages in the amount of $25 million and the plaintiff specifically requests that the court grant injunctive relief and remand the state action to the El Paso County District Court "for a timely trial by a jury." It is further alleged that the action be tried before a judge different from Judge Cannon.

On December 17, 1986, this court entered an order of dismissal, based on the view that the plaintiff's appeal from Judge Cannon's order was pending before the Colorado Court of Appeals and that this court should abstain from deciding the same issues which were on appeal. After the plaintiff's motion for reconsideration was heard on January 9, 1987, this court on January 28, 1987, granted the motion for reconsideration but stayed this civil action until determination of the appeal by the Colorado Court of Appeals on the view that a reversal of Judge Cannon's order would have a significant impact on this litigation. The entry of that stay order was appealed but the Tenth Circuit Court of Appeals affirmed it by an order and judgment on August 28, 1987, the defendant, Judge Cannon, filed a "response to stay order" attaching a copy of an

opinion from the Colorado Court of Appeals, dated August 4, 1988, affirming Judge Cannon's order of dismissal. Judge Cannon, accordingly, requested dismissal of this action and this court then entered its order to show cause of September 27, 1988, directing the plaintiff to show cause why this civil action should not be dismissed. Counsel for defendants Gary R. Cowan and the law firm of Hall & Evans also moved for dismissal in their response of October 3, 1988.

The plaintiff filed his response on October 3, 1988. In that response, Mr. Fleming contends that this court should now vacate its stay order and permit this action to proceed pursuant to 42 U.S.C. 1983. Mr. Fleming relies on Morgan v. City of Rawlins, 792 F.2d 975 (10th Cir. 1986) in claiming that the state court procedures were lacking in "quality, extensiveness, or fairness"

and that redetermination of the issues is therefore warranted. In Morgan, the court determined that the substantive issues raised in the Section 1983 complaint filed in federal court had not been addressed in the prior Wyoming action. That conclusion was warranted because the state court order of dismissal the Wyoming court failed to set forth the basis for the dismissal or any findings or conclusions.

This case is different. In his order of May 27, 1986, Judge Cannon determined that the five separate claims for relief filed by Jack E. Fleming were each based on alleged violations of professional ethical standards and that to have jurisdiction over the action, the court would have to find that Stanley C. Kent or other persons in his law firm served as plaintiff's attorney. Judge Cannon determined that the

exhibits attached to the defendants' motion to dismiss and the testimony elicited at the hearing on the motion established the opposite. It is that determination which was considered by the Colorado Court of Appeals. That court concluded that the only evidence that Kent ever represented Fleming was that Kent may have represented a partnership in which Fleming and Kent's client were partners. That was held to be insufficient to establish a conflict of interest. The only basis upon which Mr. Fleming can now contend the inadequacy of the state procedure is the refusal of Judge Cannon to order the state court defendants to answer interrogatories. That ruling does not constitute a basis for a finding that the state court procedure was so lacking in fairness as to require a reversal of the result under the due

process clause of the Fourteenth Amendment to the United States Constitution. Accordingly, this court concludes that it must give full faith and credit to the determination of the Colorado Court of Appeals affirming Judge Cannon's order of dismissal pursuant to 28 U.S.C. 1738. Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984) directs this court to grant the same effect to a state court order as would be given in the courts of Colorado. That effect is to preclude re-litigation of the merits of Mr. Fleming's claim against Kent and his law firm. Yet, that is exactly the relief which Mr. Fleming asks this court to give. It must again be repeated, as it was in this court's previous orders, that 42 U.S.C 1983 does not permit judicial review in a federal court of a final determination made

in litigation in state court. Anderson v. State of Colorado, 793 F.2.d 262 (10th Cir. 1986). Since a reversal of the state court judgment is necessary to determination of all of the plaintiff's stated claims in this court, the defendants' motions for summary judgment must be granted and this civil action dismissed. Accordingly, it is

ORDERED that the defendants' motions for summary judgment are granted and this civil action is dismissed with prejudice.

Dated: November 14, 1988

BY THE COURT:

Richard P. Matsch, Judge

APPENDIX B

APP 9

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JACK E. FLEMING,	)
	)
Plaintiff-Appellant,	)
	)No. 88-2931
v.	)(D.C. No. 86-M-2011)
	)(D. Colo.)
JOE A. CANNON, District Judge in the El Paso County District Court of the 4th Judicial District of Colorado, individually and in his official capacity; GARY R. COWAN; THE LAW FIRM OF HALL & EVANS, a Colorado Partnership, THE PROFESSIONAL LIABILITY INSURANCE CARRIER, (an insurance company), for the Law Firm of SUSEMIHL, LOHMAN, KENT, CARLSON & McDERMOTT,	)
Defendants-Appellees.	)

ORDER AND JUDGEMENT*

Before MCKAY and ANDERSON, Circuit Judges, and BROWN, District Judge.**

**The Honorable Wesley E. Brown, District Judge, United States District Court for the District of Kansas, sitting by designation.

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* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Plaintiff commenced this action pursuant to 42 U.S.C. 1983, alleging defendants violated plaintiff's constitutional rights during the course of a legal action commenced by plaintiff in Colorado state court. Plaintiff's state court action was a legal malpractice suit against the attorney who represented the adverse party in two earlier state actions commenced by plaintiff. Defendants Cowan and the law firm of Hall & Evans represented the defendant attorney in the state malpractice action. Defendant Cannon was the state court judge presiding over the malpractice action.

In his federal complaint, plaintiff asserted six claims for relief: 1) defendants, acting in concert, denied plaintiff due process, based upon defendant Cannon's order staying discovery until resolution of a motion to dismiss, and defendant Cannon's order denying plaintiff an

extension of time to respond to the motion to dismiss; 2) defendants, acting in concert, denied plaintiff access to the courts; 3) defendant Cannon was grossly negligent in basing the order granting the motion to dismiss on premature findings of fact; 4) defendants conspired to dismiss plaintiff's state action for failure to state a valid claim; 5) defendants violated Colo. R. Civ. P. 33 by staying discovery until resolution of the motion to dismiss, thereby denying plaintiff use of interrogatories; and 6) defendants denied plaintiff equal protection of the laws by treating the state court defendants differently than plaintiff. Plaintiff sought equitable relief and damages. The district court dismissed plaintiff's claims. Plaintiff appeals.

A federal district court does not have authority to review state court decisions where, as in this action, the relief sought is in the nature of appellate review. Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir. 1986); Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986); see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). The district court's order dismissing plaintiff's claims is, therefore, affirmed.

Defendant Cannon requests this court assess sanctions against plaintiff for filing a frivolous appeal. Plaintiff has had an opportunity to respond to this request.

> Courts have the inherent power to impose a variety of sanctions on . . .litigants . . . in order to regulate their docket, promote judicial efficiency, and deter frivolous filings. See, e.g., Roadway Express, Inc. v. Piper, 447 U.S. 752, 764-67, 100 S. Ct.

2455, 2463-64, 65 L.Ed.2d 488 (1980); Link v. Wabash R. Co., 370 U.S. 626, 632 82 S. Ct. 1386, 1389, 8 L.Ed.2d 734 (1962); Whitney v. Cook, 99 U.S. (9 Ott.) 607, 25 L.Ed. 446 (1878). In addition, Fed. R. App. P. 38 and 28 U.S.C. 1912 provide that a court of appeals may award just damages and single or double costs if the court "determine[s] that an appeal is frivolous" or brought for purposes of delay. This court has imposed attorney's fees and double costs for the taking of frivolous appeals in other contexts. See, e.g., United States v. Rayco, Inc., 616 F.2d 462, 464, (10th Cir. 1980).

Stafford v. Commissioner, 805 F.2d 895, 896 (10th Cir. 1986);

Stafford v. Commissioner, 805 F.2d 893,894-95 (10th Cir. 1986).

In light of plaintiff's legally frivolous appeal, an award of damages and double costs is justified.

The judgment of the United States District Court for the District of Colorado is AFFIRMED, and the case is REMANDED to the district court to determine the amount of sanctions to be assessed against plaintiff for pursuing a legally frivolous appeal. The district court may look to the principles that have evolved in the interpretation of Rule 11 in assessing the amount of the sanction to wnich defendant Cannon is entitled pursuant to Rule 38 and Sec. 1912. See Mullen v. Household Bank-Federal Sav. Bank, 867 F.2d 586, 588 (10th Cir. 1989); Atkinson v. O'Neill, 867 F.2d 589, 590-91 (10th Cir. 1989).

The mandate shall issue forthwith.

ENTERED FOR THE COURT

PER CURIAM

Dated July 3, 1989

APPENDIX C

APP 16

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JACK E. FLEMING,	)	
	)	
Plaintiff-Appellant,	)	
	)	No. 88-2931
v.	)	
	)	
JOE A. CANNON, District Judge in the El Paso County District Court of the 4th Judicial District of Colorado, individually and in his official capacity; GARY R. COWAN; THE LAW FIRM OF HALL & EVANS, a Colorado Partnership, THE PROFESSIONAL LIABILITY INSURANCE CARRIER, (an insurance company), for the Law Firm of SUSEMIHL, LOHMAN, KENT, CARLSON & McDERMOTT,	)	
	)	
Defendants-Appellees.	)	

ORDER

Before HOLLOWAY, Chief Judge, MCKAY, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY, EBEL, Circuit Judges, and BROWN, District Judge.*

The Honorable Wesley E. Brown, United States District Court for the District of Kansas, sitting by designations.

This matter is before the court on appellant's petition for rehearing with suggestion for rehearing en banc.

The materials submitted by appellant have been reviewed by the members of the hearing panel, who conclude that the original disposition was correct. Accordingly, the petition is denied on the merits.

The petition having been denied on the merits by the panel to whom the case was submitted, the petition for rehearing with suggestion for rehearing en banc was transmitted to all the judges of the court in regular active service in accordance with Rule 35(b) of the Federal Rules of Appellate Procedure. No member of the hearing panel and no judge in

regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

BY:

Deputy Clerk

Dated September 7, 1989